

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re

CIRCUIT CITY STORES, INC., et al.,

Debtors.

Chapter 11

Case No. 08-35653 (KRH)

(Jointly Administered)

RICHMOND DIVISION	
F I L E D	JUN 29 2009
F I L E D	CLERK U.S. BANKRUPTCY COURT

**PRELIMINARY RESPONSE OF 1251 FOURTH STREET INVESTORS LLC
AND BEVERLY GEMINI INVESTMENTS, LLC TO DEBTORS' TENTH
OMNIBUS OBJECTION TO CERTAIN DUPLICATE CLAIMS**

1251 Fourth Street Investors LLC and Beverly Gemini Investments, LLC (collectively, the "Landlord") hereby files its Preliminary Response ("Response") to the Debtors' Tenth Omnibus Objection to Certain Duplicate Claims (the "Claim Objection").

PRELIMINARY RESPONSE

The Landlord hereby responds to the Debtors' Claim Objection on the following grounds. Briefly stated, the Claim Objection seeks to *disallow* Landlord's Claim Number 12458 filed in the Circuit City Stores West Coast, Inc. case (08-35654) in the amount of \$2,468,704.69 and to *allow* Landlord's Claim Number 12461 filed in the Circuit City Stores, Inc. case (08-35653) in the amount of \$2,468,704.69, on the grounds that the two claims are duplicative.

The Landlord agrees that said claims are duplicative but the Landlord filed the same claim in each of the two cases for a reason. Specifically, the Landlord filed its claim in the Circuit City Stores West Coast, Inc. case based on the grounds that said debtor entity was the *lessee* under the subject commercial real property lease. Similarly, the Landlord filed its claim in the Circuit City Stores, Inc. case based on the grounds that said debtor entity was the *guarantor* of said lessee's obligations under the subject commercial real property lease.

While the Landlord acknowledges the right to payment on only one of these two claims, the Landlord does not consent to the withdrawal of either of its two claims without being provided appropriate evidence and confirmation as to which debtor entity is or shall otherwise be responsible for making distributions to creditors in this jointly administered case.

Accordingly, the Landlord objects to the relief sought by the Debtors' Claim Objection as it will prejudice the Landlord's rights to distribution based upon its lease rights as well as its separate guarantee agreement. Further, the Landlord hereby reserves all rights to supplement this Response at a later date, to the extent so necessary.

The Landlord has filed this brief Response in lieu of a formal pleading in accordance with the Debtors' authorization provided to counsel for the Landlord on June 26, 2009, a true and correct copy of which is attached as Exhibit "1" to the Affidavit of Elan S. Levey.

The Landlord further seeks all other appropriate relief.

DATED: June 26, 2009

LEVINSON, ARSHONSKY & KURTZ, LLP

/s/ Elan S. Levey
ELAN S. LEVEY
(California State Bar No. 174843)
Levinson Arshonsky & Kurtz, LLP
15303 Ventura Blvd., Suite 1650
Sherman Oaks, CA 91403
Telephone: (818) 382-3434
Facsimile: (818) 382-3433
Email: elevey@laklawyers.com

**AFFIDAVIT OF ELAN S. LEVEY IN SUPPORT OF PRELIMINARY RESPONSE OF
1251 FOURTH STREET INVESTORS LLC AND BEVERLY GEMINI
INVESTMENTS, LLC TO DEBTORS' TENTH OMNIBUS OBJECTION TO
CERTAIN DUPLICATE CLAIMS**

I, Elan S. Levey, do hereby declare as follows:

1. I am over the age of 18 years and competent to testify. I have personal knowledge of the facts contained in this Affidavit, and they are true and correct to the best of my knowledge and belief.

2. I am counsel for 1251 Fourth Street Investors LLC and Beverly Gemini Investments, LLC (collectively, the "Landlord"). This Affidavit is in support of the Landlords' Preliminary Response ("Response") to the Debtors' Tenth Omnibus Objection to Certain Duplicate Claims (the "Objection").

3. Attached hereto as Exhibit "1" is a true and correct copy of email correspondence from Kelly Lazaroff, counsel for the Debtors, that I received instructing and authorizing the Landlord to file the Preliminary Response in the form as set forth directly above.

4. On behalf of the Landlord, I hereby reserve all rights to supplement this Response at a later date, to the extent so necessary.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 26th day of June 2009 at Sherman Oaks, California.

/s/ Elan S. Levey
ELAN S. LEVEY

Elan Levey

From: Lazaroff, Kelly A [Kelly.Lazaroff@skadden.com]
Sent: Friday, June 26, 2009 10:24 AM
To: Elan Levey
Subject: RE: Circuit City

One thing I neglected to mention - you may receive a Notice of Deficient filing from the Clerk. They do that pretty automatically and we haven't figured out a way to stop it yet but you need not worry or do anything about it. The Debtors have agreed to this procedure and will in no way make an issue of any "filing deficiencies."

From: Lazaroff, Kelly A (CHI)
Sent: Friday, June 26, 2009 12:21 PM
To: 'Elan Levey'
Subject: RE: Circuit City

Elan,

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- Titled as a "preliminary response"
- Creditor's Name
- Creditor's contact information (including phone number, address, and email)
- Claim Number
- Objection being responded to
- Noting that creditor objects to relief requested
- Reserving right to supplement response at a later date

The creditor need not make any legal argument, etc., in the preliminary response, as any such substantive response will be reserved for a later date by agreement of the Debtors. We hope to resolve these responses consensually prior to the next hearing date and I will let you know if there is anything more you need to do on your end.

Please let me know if you have any other further concerns.

Kelly

Kelly A. Lazaroff
Associate, Corporate Restructuring
Skadden, Arps, Slate, Meagher & Flom LLP
155 North Wacker Drive | Chicago | Illinois | 60606-1720
T: 312.407.0617 | F: 312.827.9475
kelly.lazaroff@skadden.com

From: Elan Levey [mailto:ELevey@laklawyers.com]
Sent: Friday, June 26, 2009 12:10 PM
To: Lazaroff, Kelly A (CHI)
Subject: Circuit City

Thanks for your help.

Elan S. Levey

LA&K

Levinson Arshonsky & Kurtz, LLP
15303 Ventura Blvd., Suite 1650
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Telephone: (818) 382-3434
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Further information about the firm, a list of the Partners and their professional qualifications will be provided upon request.

CERTIFICATE OF SERVICE

I, Linda Greenstein, do hereby certify that a true and correct copy of the document:
PRELIMINARY RESPONSE OF 1251 FOURTH STREET INVESTORS LLC AND BEVERLY GEMINI INVESTMENTS, LLC TO DEBTORS' TENTH OMNIBUS OBJECTION TO CERTAIN DUPLICATE CLAIMS was served upon the parties listed below via pre-paid overnight mail.

Judge's Copy

Honorable Kevin R. Huennekens
United States Bankruptcy Court
Eastern District – Richmond Division
701 East Broad Street,
Richmond, VA, 23219-1888

Chris L. Dickerson, Esq.
Skadden, Arps, Slate, Meagher & Flom, LLP
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Assistant United States Trustee

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Via Express Mail Only

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Ian S. Fredericks, Esq.
Skadden Arps, Slate, Meagher & Flom, LLP
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Wilmington, DE 19899-0636
Counsel for the Debtors

/s/ Linda Greenstein
Linda Greenstein

Dated: June 26, 2009

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Assistant United States Trustee

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Douglas M. Foley, Esq.
McGuireWoods LLP
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901 East Cary Street
Richmond, VA 23219
Counsel for the Debtors

Via Express Mail Only

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Ian S. Fredericks, Esq.
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Counsel for the Debtors

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Counsel for the Creditors' Committee

Robert J. Feinstein, Esq.
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780 Third Avenue
36th Floor
New York, NY 10017
Counsel for the Creditors' Committee

Dated: June 26, 2009

/s/ Linda Greenstein

Linda Greenstein



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SHERMAN OAKS, CA 91403
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elevey@laklawyers.com

OUR FILE NUMBER
857-063

June 26, 2009

VIA OVERNIGHT MAIL

Honorable Kevin R. Huennekens
United States Bankruptcy Court
Eastern District – Richmond Division
701 East Broad Street,
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Attention: Clerk of the Court
Re: *In re Circuit City Stores, Inc., et al.*
United States Bankruptcy Court - Case No. 08-35653 (KRH)
Eastern District of Virginia – Richmond Division

Dear Clerk of the Court:

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Very truly yours,

ELAN S. LEVEY
Levinson Arshonsky & Kurtz, LLP

ESL/lm-g
Enclosure